FILE COPY.

Office Supreme Court U. S.
FILED
NOV 2 1903
JAMES H. McKENNEY,
Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1903.

THE UNITED STATES OF AMERICA
v.
THE MONTANA LUMBER AND MANUFACTURING COMPANY, THE NORTHERN PACIFIC RAILWAY COMPANY, et al. } No. 425.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

MOTION TO ADVANCE.

In the Supreme Court of the United States.

OCTOBER TERM, 1903.

THE UNITED STATES OF AMERICA
v.
THE MONTANA LUMBER AND MANUFACTURING COMPANY, THE NORTHERN PACIFIC RAILWAY COMPANY, et al. } No. 438.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

MOTION TO ADVANCE.

The Solicitor-General, on behalf of the United States of America, respectfully moves the court to advance the above-entitled case for hearing at the present term of the court; and for grounds of motion respectfully assigns the following:

The Government sued the defendants to recover $15,000, the value of 2,000,000 feet of timber taken from unsurveyed Government lands in the district of Montana which, when surveyed, will be T. 26 N., R. 34 W., Montana land district, and converted by the defendants. The defendant railway company answered separately, denying the material

allegations of the complaint. The other defendants answered jointly, likewise denying the material allegations of the complaint and alleging, by way of further defense, that although they cut timber from the premises mentioned, it was cut from that portion of said township which will, when surveyed, be section 5, which section is within the limits of the grant to the Northern Pacific Railway Company, and that the defendant lumber company was, at the time of cutting, by mesne conveyances from the railway company, the owner of said section 5.

The trial court, over objections of plaintiff, permitted the defendants to introduce evidence of a private survey and to prove by other evidence that the timber was taken from lands which the said private survey showed to be in said section 5. The Government offered to prove in rebuttal, by an engineer, that said private survey was incorrect, but the court refused to permit the witness so to testify, and thereupon directed a verdict for defendants on the ground that the Government failed to prove its ownership of the lands in question.

The circuit court of appeals certifies to this court for determination the correctness of the action of the trial court in admitting said evidence of the defendant, in excluding the testimony in rebuttal offered by the Government, and in directing a verdict for defendants, the circuit court of appeals being divided upon these questions.

Following is an extract from the certificate of the said circuit court of appeals, showing the importance of advancing the case in this court:

> Whereas this court is divided in opinion upon the questions of law so presented, and another case involving similar questions is pending before this court on writ of error to the district court of the United States for the district of Montana, and a third case is pending before this court on writ of error to the circuit court of the United States for the eastern district of Washington, and it is of public importance that said questions be speedily and finally determined, it is ordered, etc.

It is suggested to the court that the case, if advanced, be assigned for hearing on or about January 4, 1904.

HENRY M. HOYT,
Solicitor-General.